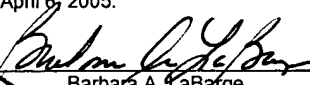
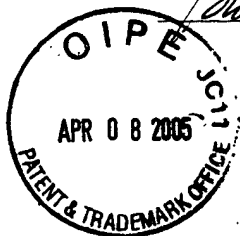


EXPEDITED PROCEDURE

Certificate Under 37 CFR 1.8(a)

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage is first-class mail in an envelope addressed to: MAIL STOP PETITION, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on April 6, 2005.


Barbara A. LaBarge



PATENT

Case No. 11336/431(P01050US)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)	
)	
Richard E. Auerbach, et al.)	Group Art Unit: 3729
)	
Serial No.: 09/884,231)	Examiner: Anthony Tugbang
)	
Filed: June 19, 2001)	
)	
For: WOVEN SPIDER FOR A LOUDSPEAKER)	

PETITION FROM REQUIREMENT FOR RESTRICTION

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The Applicant, through the subscribing attorney, hereby petitions pursuant to 37 CFR §1.144 for review of a final requirement for restriction. In addition, Applicant, respectfully requests Expedited Procedure with regard to this Petition due to the after-final status of the above-identified application.

In an Office Action mailed July 27, 2004 (a copy is attached), the claims of the above-identified patent application were the subject of a five way restriction requirement. The basis and explanation for the Restriction Requirement was that each of the identified species (groups of

claims) are "mutually exclusive from each other." However, MPEP section 808.02 requires that the Examiner must show by appropriate explanation one of the following: 1) separate classifications thereof, 2) a separate status in the art when classifiable together or 3) a different field of search.

In response to the Restriction Requirement mailed November 1, 2004 (a copy is attached), Applicant provisionally elected with traverse Species D – Claims 28-33 and 42-43. In addition, Applicant also identified Claim 1 as generic. Further, Applicant discussed the limitations of independent Claims 1, 28 and 34, added additional dependent claims 38-43, and requested that the Restriction Requirement be reconsidered and modified or withdrawn. In a Final Official Action mailed on January 14, 2005 (a copy is attached), Claim 1 was indicated as generic and the restriction requirement was made final. Examination of only Claim 1 and Claims 28-33 was included in the Final Official Action.

Applicant subsequently contacted the Examiner via telephone to discuss the justification for the five way restriction requirement. During the conversation, the mutual exclusivity of the claims was discussed. The Examiner reiterated that the Restriction Requirement and the Final Rejection were proper. Applicant has also filed concurrent herewith an After Final Response (a copy of which is attached) transversing the Final Rejection.

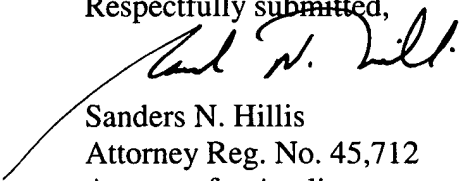
Applicant respectfully disagrees with the Restriction Requirement because pursuant to MPEP 808.02, the identified species have not been separately classified, there is no indication that the species have a separate status in the art when classifiable together, or that a different field of search is required for each species. As evidenced by the previous Official Actions mailed May 20, 2003 and November 18, 2003 (copies attached) in which a total of three prior art patents/publications were cited in rejecting all of Claims 1-5, 18, 19 and 28-33, a separate status in the art or field of search has not been evidenced. In addition, examination on the merits of presently

pending Claim 31 was included in the Final Official action mailed January 14, 2005. Claim 31 was identified to be part of Species D and includes the limitation that a selected thread wrapped with the electrical conductor is a flex locus. However, Species B directed to weaving the thread as a flex locus is considered "mutually exclusive" with respect to Claim 31.

Aside from the fact that "mutual exclusivity" does not fulfill the requirements articulated by MPEP 808.02, mutual exclusivity is defined as "being related such that each excludes or precludes the other." Websters Ninth Collegiate Dictionary, 1990. With respect to Species A, B, C, D, and E, limitations of the Claims of one species do not exclude the other species. As an example, Claims 6-17 of Species B include the limitation of treating a cloth with a second substance. Species E is directed to treating a woven cloth with a second substance. Clearly, Species E and Species B cannot be "mutually exclusive."

For at least the previously discussed reasons, Applicant respectfully request review of the Restriction Requirement in the present application and a finding that the Restriction Requirement is improper. The subscribing attorney believes that this submission complies with all requirements. Please contact the undersigned attorney if any additional information is required to review the present Restriction Requirement.

Respectfully submitted,



Sanders N. Hillis
Attorney Reg. No. 45,712
Attorney for Applicant

SNH/bal

Enclosures: Official Actions mailed 5/20/03, 11/18/03,
7/27/04 and 1/14/04
Response mailed 11/1/04
After Final Official Action Response

BRINKS HOFER GILSON & LIONE
CUSTOMER NO. 27879